

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MELVIN PARKER, III,
Plaintiff,

v.

JEFF LYNCH, et al.,
Defendants.

No. 2:23-cv-0754 DC CSK P

ORDER AND FINDINGS &
RECOMMENDATIONS

Plaintiff is state prisoner, proceeding without counsel, with a civil rights action pursuant to 42 U.S.C. § 1983. Pursuant to the Further Scheduling Order filed July 23, 2025, plaintiff's pretrial statement was due on August 29, 2025. (ECF No. 53.) Plaintiff did not file his pretrial statement. By order filed September 10, 2025, plaintiff was ordered to show cause within fourteen days why this action should not be dismissed for his failure to file a pretrial statement. (ECF No. 58.) Plaintiff was warned that failure to respond to the September 10, 2025 order would result in a recommendation of dismissal of this action. (*Id.*) Fourteen days passed from September 10, 2025 and plaintiff did not respond to the September 10, 2025 order. For the reasons discussed below, this Court recommends that this action be dismissed without prejudice based on plaintiff's failure to prosecute. See Fed. R. Civ. P. 16(f); Local Rule 110.

The Local Rules, corresponding with Federal Rule of Civil Procedure 11, provide, "[f]ailure of counsel or of a party to comply with . . . any order of the Court may be grounds for

1 the imposition by the Court of any and all sanctions . . . within the inherent power of the Court.”

2 Local Rule 110. “District courts have inherent power to control their dockets” and, in exercising

3 that power, may impose sanctions, including dismissal of an action. Thompson v. Housing Auth.,

4 City of Los Angeles, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action based on

5 a party’s failure to prosecute an action, obey a court order, or comply with local rules. See, e.g.,

6 Ferdik v. Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for failure to comply with

7 a court order to amend a complaint); Malone v. U.S. Postal Service, 833 F.2d 128, 130-31 (9th

8 Cir. 1987) (dismissal for failure to comply with a court order); Henderson v. Duncan, 779 F.2d

9 1421, 1424 (9th Cir. 1986) (dismissal for failure to prosecute and to comply with local rules).

10 In determining whether to dismiss an action, the Court must consider several factors: (1) the

11 public’s interest in expeditious resolution of litigation; (2) the Court’s need to manage its docket;

12 (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on

13 their merits; and (5) the availability of less drastic sanctions. Carey v. King, 856 F.2d 1439, 1440

14 (9th Cir. 1988).

15 Here, in determining to recommend that this action be dismissed, the Court considered the

16 five factors set forth above. The Court cannot effectively manage its docket if plaintiff ceases

17 litigating his case. Plaintiff’s failure to file the pretrial statement on August 29, 2025 and failure

18 to respond to the September 10, 2025 order to show cause suggests that plaintiff abandoned this

19 action and that further time spent by the Court thereon will consume scarce judicial resources. In

20 addition, this district court in particular has a strong need and interest in managing its docket

21 given the extremely high caseload in the Eastern District of California. Thus, this Court finds that

22 the first and second factors—the public’s interest in expeditious resolution of litigation and the

23 Court’s need to manage its docket—weigh in favor of dismissal.

24 Under the circumstances of this case, the third factor, prejudice to defendants from

25 plaintiff’s failure to file a pretrial statement, is neutral. While plaintiff’s failure to file the pretrial

26 statement could delay resolution of this action, and a presumption of injury arises from the

27 unreasonable delay in prosecuting an action, Anderson v. Air W., 542 F.2d 522, 524 (9th Cir.

28 1976), the dismissal of this action would not prejudice defendants.

1 The fourth factor—public policy favoring a disposition of actions on its merits—arguably
2 weighs against dismissal.

3 The fifth factor—availability of less drastic sanctions—favors dismissal. The Court
4 warned plaintiff that failure to respond to the September 10, 2025 order would result in dismissal
5 of this action. (ECF No. 58.) The Court finds no suitable alternative to dismissal of this action.

6 Despite the lack of prejudice to defendants and the public policy favoring disposition on
7 the merits, this Court finds that the first, second and fifth factors discussed above weigh in favor
8 of dismissal. Accordingly, this Court recommends dismissal of this action based on plaintiff's
9 failure to prosecute.

10 Accordingly, IT IS HEREBY ORDERED that the trial confirmation hearing set for
11 November 14, 2025 at 1:30 p.m. and the jury trial set for February 23, 2026 at 9:00 a.m. before
12 the Honorable Dena M. Coggins are vacated; and

13 IT IS HEREBY RECOMMENDED that this action be dismissed without prejudice. See
14 Fed. R. Civ. P. 16(f); Local Rule 110.

15 These findings and recommendations are submitted to the United States District Judge
16 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
17 after being served with these findings and recommendations, any party may file written
18 objections with the court and serve a copy on all parties. Such a document should be captioned
19 "Objections to Magistrate Judge's Findings and Recommendations." Any response to the
20 objections shall be filed and served within fourteen days after service of the objections. The
21 parties are advised that failure to file objections within the specified time may waive the right to
22 appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

23
24 Dated: October 8, 2025

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26 
27 CHI SOO KIM
28 UNITED STATES MAGISTRATE JUDGE

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